

IN THE SENATE

SENATE BILL NO. 1213

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO LOCAL GOVERNMENT; AMENDING SECTION 37-401, IDAHO CODE, TO DELETE ARCHAIC LANGUAGE, TO PROVIDE THAT THE IDAHO DEPARTMENT OF AGRICULTURE SHALL COORDINATE WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ENSURE THAT DAIRY FARMS COMPLY WITH APPLICABLE AIR QUALITY LAWS, TO STATE THE INTENT OF THE LEGISLATURE, TO PROVIDE THAT LOCAL GOVERNMENTS ARE PREEMPTED FROM IMPOSING CERTAIN REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6529, IDAHO CODE, TO RESTRICT THE AUTHORITY OF BOARDS OF COUNTY COMMISSIONERS FROM REGULATING AIR OR WATER QUALITY RELATING TO CERTAIN AGRICULTURAL OPERATIONS AND TO PROVIDE THAT COUNTIES SHALL NOT IMPOSE CERTAIN REGULATIONS ON THE OPERATION OF PROPOSED CONFINED ANIMAL FEEDING OPERATIONS; AMENDING SECTION 67-6529B, IDAHO CODE, TO REVISE LEGISLATIVE FINDINGS; AMENDING SECTION 67-6529D, IDAHO CODE, TO DELETE REFERENCE TO LOCAL REGULATION; AND AMENDING SECTION 67-6529G, IDAHO CODE, TO PROVIDE THAT COUNTIES SHALL NOT IMPOSE OR REQUIRE CERTAIN REGULATIONS ON PROPOSED CONFINED ANIMAL FEEDING OPERATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-401, Idaho Code, be, and the same is hereby amended to read as follows:

37-401. INSPECTIONS, EXAMINATIONS AND TESTS BY DEPARTMENT OF AGRICULTURE – DAIRY FARMS – NUTRIENT MANAGEMENT PLANS REQUIRED – CERTAIN EVIDENCE REQUIRED. (1) The director of the department of agriculture is hereby authorized and directed to designate any agent to inspect, examine and test any or all dairy products in accordance with rules as the department may prescribe; and to ascertain and certify the grade, classification, quality or sanitary condition thereof and other pertinent facts as the department may require. The director or agent of the department of agriculture of the state of Idaho shall make sanitary inspection of milk, cream, butter and dairy products of any kind whatsoever, intended for human consumption, and of containers, utensils, equipment, buildings, premises or anything whatsoever employed in the production, handling, storing, processing or manufacturing of dairy products or that would affect the purity of the products. Inspections, examinations and tests shall be made to meet the requirements of the laws of the state and of the United States for the sale of the products or their transportation in both intrastate and interstate commerce. Any agent designated by the director to make inspections shall have the right for that purpose to enter any premises and buildings where milk, cream, butter or dairy products shall be produced, stored, processed or manufactured.

(2) Acting in accord with rules of the department, the director or agent of the department shall review plans and specifications for construction of new, modified or expanded waste systems and inspect any dairy farm to ascertain and certify sanitary conditions, waste systems and milk quality.

(23) The director or agent shall issue a permit authorizing the sale of milk for human consumption to all dairy farms that meet the requirements of this chapter, and rules promulgated pursuant to this chapter.

(34) All dairy farms shall have a nutrient management plan approved by the department. The nutrient management plan shall cover the dairy farm site and other land owned and operated by the dairy farm owner or operator. Nutrient management plans submitted to the department by the dairy farm shall include the names and addresses of each recipient of that dairy farm's livestock waste, the number of acres to which the livestock waste is applied and the amount of such livestock waste received by each recipient. The information provided in this subsection shall be available to the county in which the dairy farm, or the land upon which the livestock waste is applied, is located. If livestock waste is converted to compost before it leaves the dairy farm, only the first recipient of the compost must be listed in the nutrient management plan as a recipient of livestock waste from the dairy farm. ~~Existing dairy farms shall submit a nutrient management plan to the department on or before July 1, 2001.~~

(45) Any new dairy farms or dairy farms that change owners or operators shall have an approved nutrient management plan on file with the department prior to the issuance of the milk permit for that dairy. The nutrient management plan shall be implemented upon approval of the plan by the department.

(6) The department shall coordinate with the department of environmental quality to ensure that all dairy farms comply with all applicable air quality laws.

(7) It is the intent of the legislature that the state regulation of air and water quality associated with dairy farms and with management of dairy waste be comprehensive. Local governments are preempted from imposing requirements on dairy farms or on the application of dairy nutrients for the purpose of protecting air and water quality.

(48) The director or his agent may issue a permit to sell milk for human consumption to a new or expanding dairy farm only upon presentation to the director by the new or expanding dairy farm of:

- (a) A certified letter, supplied by the board of county commissioners, certifying the new or expanding dairy farm's compliance with applicable county livestock ordinances; and
- (b) Evidence that a valid water right exists to supply adequate water for the new or expanding dairy farm; or
- (c) A copy of an application for a permit to appropriate water that has been filed with the Idaho department of water resources and which, if approved, will supply adequate water for the dairy farm; or
- (d) A copy of an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho department of water resources and which, if approved, will supply adequate water for the dairy farm.

(59) As used in this section:

- (a) "Animal units" shall be as defined in rule by the director.
- (b) "Expanding dairy farm" means an existing, legally permitted dairy farm that increases, or applies to increase, its existing animal units beyond the number for which

1 it is permitted under applicable county livestock ordinances or increases, or applies to
2 increase, the waste containment system.

3 (c) "New dairy farm" means a dairy farm constructed after the effective date of this act.

4 SECTION 2. That Section 67-6529, Idaho Code, be, and the same is hereby amended to
5 read as follows:

6 67-6529. APPLICABILITY TO AGRICULTURAL LAND – COUNTIES MAY
7 REGULATE SITING OF CERTAIN ANIMAL OPERATIONS AND FACILITIES. (1) No
8 power granted hereby shall be construed to empower a board of county commissioners to
9 enact any ordinance or resolution which deprives any owner of full and complete use of
10 agricultural land for production of any agricultural product. Agricultural land shall be defined
11 by local ordinance or resolution. Further, notwithstanding the provisions of section 67-6502(k),
12 Idaho Code, no power granted hereby shall be construed to empower a board of county
13 commissioners to enact any ordinance or resolution to regulate the air or water quality within
14 the confines of an agricultural operation.

15 (2) Notwithstanding any provision of law to the contrary, a board of county
16 commissioners shall enact ordinances and resolutions to regulate the siting of large confined
17 animal feeding operations and facilities, as they shall be defined by the board, provided
18 however, that the definition of a confined animal feeding operation shall not be less restrictive
19 than the definition contained in section 67-6529C, Idaho Code, including the approval or
20 rejection of sites for the operations and facilities. A board of county commissioners shall
21 not, however, have authority to regulate the air or water quality of confined animal feeding
22 operations and facilities under their siting power. At a minimum, a county's ordinance or
23 resolution shall provide that the board of county commissioners shall hold at least one (1)
24 public hearing affording the public an opportunity to comment on each proposed site before the
25 siting of such facility. Several sites may be considered at any one (1) public hearing. Only
26 members of the public with their primary residence within a one (1) mile radius of a proposed
27 site may provide comment at the hearing. However, this distance may be increased by the
28 board. A record of each hearing and comments received shall be made by the board. The
29 comments shall be duly considered by the board when deciding whether to approve or reject a
30 proposed site. A board of county commissioners may reject a site regardless of the approval
31 or rejection of the site by a state agency. Provided however, a county shall not impose
32 environmental regulations on the operation of a proposed confined animal feeding operation
33 beyond those contained in state law.

34 SECTION 3. That Section 67-6529B, Idaho Code, be, and the same is hereby amended
35 to read as follows:

36 67-6529B. LEGISLATIVE FINDINGS AND PURPOSES. The legislature finds that:

37 (1) Confined animal feeding operations increase social and environmental impacts in
38 areas where these facilities are located;

39 (2) The siting of confined animal feeding operations is a complex and technically
40 difficult undertaking requiring assistance to counties that most counties and other units of local
41 government as they exercise their land use planning authority do not possess the capability or
42 have the resources to do;

1 (3) It is in the interest of the state of Idaho that state departments and agencies use
 2 their particular expertise to assist counties and other local governments in the environmental
 3 evaluation of appropriate sites for confined animal feeding operations.

4 SECTION 4. That Section 67-6529D, Idaho Code, be, and the same is hereby amended
 5 to read as follows:

6 67-6529D. ODOR MANAGEMENT PLANS – COUNTY REQUEST FOR
 7 SUITABILITY DETERMINATION—~~LOCAL REGULATION~~. (1) Counties may require
 8 an applicant for siting of a CAFO to submit an odor management plan as part of their
 9 application.

10 (2) A board of county commissioners considering the siting of a CAFO may request
 11 the director of the department of agriculture to form a CAFO site advisory team to provide a
 12 suitability determination for the site.

13 ~~(3) This act does not preempt local regulation of a CAFO.~~

14 SECTION 5. That Section 67-6529G, Idaho Code, be, and the same is hereby amended
 15 to read as follows:

16 67-6529G. REPORT OF CAFO SITE ADVISORY TEAM – COUNTY ACTION. The
 17 board of county commissioners requesting the suitability determination, upon receipt of the
 18 written suitability determination report by the CAFO site advisory team, may use the report
 19 as the county deems appropriate. Provided however, the county shall not impose or require
 20 additional or conflicting environmental regulations on the operation of the proposed CAFO
 21 beyond those contained in state law.